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Office of the Attorney General

State of South Carolina

February 21, 2012

*1 Tracey C. Easton, Esquire
General Counsel
S.C. State Housing Finance and Development Authority
300-C Outlet Pointe Blvd.
Columbia, SC 29210

Dear Ms. Easton:

We received your letter on behalf of the South Carolina State Housing Finance and Development Authority (the "Authority"). By way of background, you state that the Authority is currently the Contract Administrator for Project-Based Section 8 Housing Assistance Payments Contracts (the "Contract Administrator Program") for South Carolina, and that the Contract Administrator Program is administered pursuant to an agreement with the United States Department of Housing and Urban Development ("HUD"). You inform us that HUD recently issued an Invitation of Applications: Contract Administrators For Project-Based Section 8 Housing Assistance Payments Contracts (the "Invitation"). Pursuant to HUD's Invitation, the Authority was required to submit a Reasoned Legal Opinion, including a statement establishing the Authority's authorization to act state-wide. You state the Authority is informed and believes that two local housing authorities have also applied for consideration under the Invitation. You therefore request an opinion of this office to address the authority of a local housing authority to act statewide.

Law/Analysis

In reviewing your question, it is imperative that there be compliance with the rules of statutory construction. South Carolina Coastal Conservation League v. South Carolina Dept. of Health and Environmental Control, 390 S.C. 418, 702 S.E.2d 246 (2010). Statutory interpretation is a question of law. City of Newberry v. Newberry Elec. Co-op., Inc., 387 S.C. 254, 692 S.E.2d 510 (2010). The primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000); Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996). The best evidence of intent is in the statute itself. Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their plain and ordinary meaning. Id.

If the [L]egislature's intent is clearly apparent from the statutory language, a court may not embark upon a search for it outside the statute. When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the [L]egislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.

While it is true that the purpose of an enactment will prevail over the literal import of the statute, this does not mean that [a] Court can completely rewrite a plain statute.

Hodges, 533 S.E.2d at 582. What the Legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the Legislature. Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 694 S.E.2d 525 (2010); Wade v. State, 348 S.C. 255, 559 S.E.2d 843 (2002); see also Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E. 2d 166, 168 (1966) ["There is no safer nor better rule of interpretation than when language is clear and unambiguous it must be held to mean what it plainly states"].

*2 South Carolina's "Housing Authorities Law" is found in Title 31, Chapters 3 and 11, of the South Carolina Code. In S.C. Code Ann. § 31-3-30, the Legislature states:

[i]t is hereby declared as a matter of legislative determination that (1) in order to promote and protect the health, safety, morals and welfare of the public, it is necessary in the public interest to provide for the creation of public corporate bodies to be known as housing authorities and to confer upon and vest in such housing authorities all powers necessary or appropriate in order that they may engage in low-cost housing and slum clearance projects and (b) the powers herein conferred upon the housing authorities, including the power to acquire property, to remove unsanitary or substandard conditions, to construct and operate

housing accommodations and to borrow, expend, lend and repay moneys for the purposes herein set forth, are public objects essential to the public interest.

Separate statutes in Chapter 3 of Title 31 govern the creation of city, county and regional housing authorities. When determining the jurisdiction of a housing authority, the language of the enabling statute is a good starting point. Section 31-3-310 provides for the creation of a city housing authority. Such housing authority has no operational existence or power until the city council determines that a housing authority is needed and vote to create the housing authority. See § 31-3-320. Clearly, city council only has jurisdiction to act on matters related to the city which elected or appointed them. Columbia, for example, could not vote to create a housing authority in West Columbia. In addition to provisions regarding the creation of a city housing authority, there are specific references to jurisdictional limits. For example, § 31-3-390 provides that “[t]he territorial jurisdiction of each authority, except as otherwise specially provided, shall be coterminous with the boundaries of the city creating the authority unless this territory is extended by the director [*i.e.*, the Secretary of Commerce].”¹ The territorial jurisdiction of a city housing authority may be extended to areas contiguous to those being served by a housing authority (*i.e.*, abutting the city limits) provided such extension “does not conflict with any other housing authority.” Section 31-3-400 provides that a housing authority of one city may exercise any or all of its powers within the boundaries of another city provided certain requirements set forth in that provision are met.² In previous opinions of this office we advised that this provision calls for an extraterritorial exercise of powers, but does not extend the actual jurisdiction of a city housing authority into another municipality. See *Ops. S.C. Atty. Gen.*, December 21, 1988; March 11, 1977. Also, § 31-3-1310 *et seq.* provide for the consolidation of two or more city housing authorities, whether or not they are contiguous, so long as the requirements spelled out in § 31-3-320 are met. If a consolidated housing authority is created, it acts in place of existing housing authorities. See § 31-3-1320. Territorial jurisdiction for consolidated housing authorities is provided for in § 31-3-1350 to “include all of the territory within the boundaries of each municipality” in the consolidated housing authority. Finally, § 31-3-750 provides that the director may extend the territorial jurisdiction of a city housing authority into contiguous county property, “including territory included within the territorial jurisdiction of the housing authority of a county.”

*3 Sections 31-3-710 *et seq.* establish the mechanism for the creation of a county housing authority. Section 31-3-720 requires a resolution of the county’s legislative delegation in the same manner as that provided in § 31-3-320 for a city housing authority. Jurisdiction of a county housing authority is provided in § 31-3-750, which states: “[t]he territorial jurisdiction of a housing authority of a county shall be coterminous with the boundaries of the county in which such authority is situated but shall not include that portion of the county within the territorial jurisdiction of any housing authority of a city....” Section 31-3-760 provides the mechanism for a city housing authority to come within the territorial jurisdiction of a county housing authority, “if a resolution is adopted by the council of the city, and also by the housing authority of the city if it shall have been theretofore established, declaring, as provided in § 31-3-400, that there is a need for the county housing authority to exercise its powers within such city.” Therefore, a county housing authority could be created and, with the cooperation of the involved municipalities and/or city housing authorities, the jurisdiction of a county housing authority may be extended county-wide. Sections 31-3-910 *et seq.* provide authority for the creation of regional housing authorities, “[i]f the legislative delegation of each of two or more contiguous counties by resolution declares that there is a need for one housing authority to be created for all of such counties to exercise in such counties the powers and other functions prescribed for a regional housing authority.” If a regional housing authority is created, it acts in place of existing housing authorities. See § 31-3-910. The jurisdiction of a regional housing authority is provided to include, “except as otherwise provided in this chapter and Chapter 11, all of the counties for which such regional housing authority is created and established.” See § 31-3-1010. However, a regional housing authority’s area of operation does not include any portion of a county within the territorial boundaries of any city, unless the requirements as provided in § 31-3-400 are met. In addition, the jurisdiction of a regional housing authority may be increased to include one or more contiguous counties, provided certain requirements are met. Section 31-3-1020.³

By setting out the mechanisms for creation of municipal, county, and regional housing authorities, the Legislature has clearly defined and limited the service areas of such housing authorities. Otherwise, there would be no need for separate statutory provisions for their creation and specific limits to their areas of operation. The Legislature thus clearly intended these housing authorities to be local to the specific geographic area in which they operate.

In addition, the general provisions of the “Housing Authorities Law” make reference to jurisdictional limits. Section 31-3-40 provides authority for enlarging a local housing authority’s jurisdiction by cooperative agreement between local authorities. It states:

*4 [a]ny two or more housing authorities may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing (including the issuance of bonds, notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating or contracting with respect to a housing project

located within the territorial jurisdiction or area of operation of any one or more of such authorities. For such purpose any authority may by resolution prescribe and authorize any other housing authority or authorities so joining or cooperating with it to act on its behalf with respect to any or all of such powers. Any authorities joining or cooperating with one another may by resolution appoint from among the commissioners of such authorities an executive committee with full power to act on behalf of such authorities with respect to any or all of their powers, as prescribed by resolutions of such authorities.

Obviously, such a general grant of power would not be necessary if the jurisdiction of a local housing authority extended beyond the boundaries of the municipality, county, or region in which it is created.

Further, we note that § 31-3-450, entitled "Specific powers with respect to projects, planning, and the like," states, in pertinent part, that a city housing authority has power to "investigate into living and housing conditions within its territorial limits and enter upon any building or property in order to conduct investigations or make surveys; to determine where unsanitary or substandard conditions exist within such limits; ..." [Emphasis added]. A consolidated housing authority, "within the area of operation of such consolidated house authority," has the same powers as those provided for other housing authorities. See § 31-3-1360. Likewise, § 31-3-730 provides that county housing authorities "shall, within their territorial jurisdiction as herein defined, have all of the functions, rights, powers, duties and liabilities provided in this chapter and Chapter 11 for housing authorities in cities, and the provisions of this chapter and Chapter 11 shall, within the territorial jurisdiction of such housing authorities of the counties, apply to the housing authorities of the counties in the same manner and to the same extent as this chapter and Chapter 11 applies to the housing authorities created in cities." [[Emphasis added]. These provisions further make it clear to us that the Legislature provided for limits to the jurisdictional boundaries of local housing authorities.

With these jurisdictional limitations in mind, we note that the Legislature has provided for statewide jurisdiction of the Authority. The South Carolina State Housing Finance and Development Authority Act of 1977 (the "Act") expanded the powers of the Authority. See § § 31-13-10 *et seq.* The governing body of the Authority is the Board of Commissioners ("Board"), whose members are appointed by the Governor, with the advice and consent of the Senate. See Section 31-13-30. In addition to the powers conferred by the Act, the Authority and its Board have the same functions, rights, powers, duties, privileges, immunities and limitations as those provided for cities, counties, or regional housing authorities created in Chapter 3 of Title 31. See 31-13-50. Importantly, the Authority is expressly authorized in § 31-13-60 to "conduct its operations in any or all of the counties of the State." The Authority may also operate in any municipality. See Op. S.C. Atty. Gen., January 6, 1972; see also § 31-13-190 ["In addition to all other powers, functions, rights, duties and privileges vested in the Authority ... the Authority may exercise all powers necessary to carry out its functions in any county or municipality and, without limitation, may exercise any of the following powers: ... acquire, own, and operate rental projects" under certain terms and conditions]. Section 31-13-60 specifies the procedures necessary for the Authority to act within the political boundaries of a county or city. If an existing housing authority is operating in a county or city where the Authority determines a need for additional housing exists, then the Authority shall advise the housing authority involved. If the Authority fails to receive appropriate plans by the housing authority involved to meet the housing need within 60 days, then the Authority may operate in the county after written approval from the governing body.

Conclusion

*5 The Housing Authorities Law governs public housing authorities at the local level. The Legislature has specifically circumscribed the geographic area within which a city, county or regional housing authority may act. See Op. S.C. Atty. Gen., March 2, 1978 [stating that a housing authority can only operate in its specific geographic area]. These statutory provisions that prescribe the territorial jurisdiction of local housing authorities define and limit the service areas of such authorities, except in limited circumstances where the jurisdiction of a housing authority has been extended in the discretion of the director and by proper resolution of the governing body where such administration would occur that there is need for the housing authority to extend its functions therein. See Op. S.C. Atty. Gen., October 4, 1988 [[advising that, although State law limits the service areas of local housing authorities, the director may adjust or modify the extra-territorial boundaries of a housing authority to best serve the needs of the public]. In our opinion, it is not plausible to infer that local housing authorities may operate state-wide, particularly where their jurisdiction is subject to strict statutory limitations. Conversely, the Authority has express statutory authority to act state-wide. See Op. S.C. Atty. Gen., January 6, 1972 [stating the former State Housing Authority is given authority to operate within the political jurisdiction of any county requesting its services].

Lastly, as we have stated in previous opinions, this office is not authorized to make factual determinations in a legal opinion. In an opinion dated February 26, 2001, we explained:

[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions. Unlike a fact-finding body such as a legislative committee, an administrative agency

or a court, we do not possess the necessary fact-finding authority and resources required to adequately determine ... factual questions.

Thus, while we may offer an opinion as to the jurisdiction of housing authorities under State law, we believe that HUD is in a better position to decide whether or not a housing authority may be considered under the Invitation.

If you have any further questions, please advise.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General

Footnotes

- 1 Pursuant to § 31-3-20(1) and for purposes of Chapters 3 and 11, the term “director” means the Secretary of Commerce.
- 2 Pursuant to § 31-3-400, the council of the municipality in which the city housing authority is to exercise its power, and any existing housing authority of such municipality, must adopt a resolution “declaring that there is a need for the [city] housing authority ... to exercise its powers within such municipality.”
- 3 The area of operation of a regional housing authority may be decreased if a resolution is adopted by the legislative delegation of each of the counties that there is a need to exclude a county or counties from the regional authority. See § 31-3-1060. A county may also withdraw from a regional housing authority under certain conditions. See § 31-3-1090.

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